IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

NOTICE OF MOTION NO.2621 OF 2004

IN

SUIT NO.2660 OF 2004

...

Krishnakant R. Lotia ...Plaintiff

v/s.

Recovery Officer of DRT

and ors. ...Defendants

...

Mr.D.H. Shah for the Plaintiff.

Mr.John Daniel for Defendant No.2.

...

CORAM: D.K.DESHMUKH, J.

DATED: 14TH JULY,2005

P.C.:

1. This Notice of Motion is taken out by the Plaintiff. The Plaintiff has filed this suit for a decree of specific performance. The Plaintiff claims that there is an agreement to sell the property in his favour. It appears that the Defendants Nos. 3 & 4 had taken a loan from the Defendant No.2/bank and therefore in the proceedings taken out by the bank for execution of the decree passed by the D.R.T., the property has been attached.

2. By this Notice of Motion, the Plaintiff seeks a temporary injunction restraining the recovery officer from selling the property.

3. As the sale of the property is being conducted in execution of the decree passed by the D.R.T., there is no question of staying the sale merely because there is an agreement of sale in favour of the Plaintiff. I am doubtful whether such a suit would be maintainable against the recovery officer of the D.R.T. The Plaintiff does not have a prima facie case, therefore, he is not entitled to any temporary injunction. Notice of Motion disposed of. Any ad-interim order that may be operating is vacated.

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